

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.3365 of 2014(O&M)

Date of decision:22.10.2016

Mohd. Aslam

....Petitioner

VERSUS

Ashraf Saifi

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sunny Singla, Advocate for the petitioner.

Mr. Arun Jindal, Advocate for the respondent.

REKHA MITTAL, J.

The present petition has been directed against order dated 09.04.2014 (Annexure P-4) passed by the Civil Judge (Junior Division), Malerkotla vide which application for additional evidence filed by the petitioner/defendant has been dismissed.

Counsel for the petitioner has submitted that the respondent/plaintiff has filed a suit for possession by way of specific performance of agreement to sell dated 19.04.2008, writings dated 22.04.2009 and 22.04.2010 in regard to house measuring 41.2/9 square yards for a sale consideration of Rs.1,20,000/-. The petitioner/defendant filed the written statement specifically averring that he neither agreed to sell the suit property nor executed any agreement to sell. The petitioner was in dire need of money, he asked the plaintiff for a loan of Rs.30,000/- to which the plaintiff agreed on the condition that he will take signatures of the petitioner on blank papers and other documents as security. The

petitioner agreed to the condition of the plaintiff and signed on blank stamp papers. Thereafter, up to 28.11.2009, the petitioner returned Rs.21,500/- and further paid Rs.2,500/- on 07.12.2009 and a sum of Rs.6,000/- remained due. It is further submitted that the petitioner also raised a specific plea in the written statement that balance was struck on the receipt written by daughter of the defendant namely Razia. After receipt of Rs.2,500/- on 07.12.2009, the plaintiff signed against amount of Rs.2,500/- on the receipt. Thereafter, on 08.01.2010 and 12.02.2010, the plaintiff further received Rs.2,000/- each time from the petitioner and as such only Rs.2,000/- remained due towards the defendant. It is vehemently argued that the petitioner closed his evidence within a period of 4 months but the learned trial Court has wrongly held that application for additional evidence has been filed with an intent to delay the proceedings. In addition, it is submitted that delay itself cannot be a ground to shut right of a party to adduce relevant and material evidence, necessary for complete and effective adjudication of the matter in controversy. Further argued that additional evidence can be allowed at any stage of the proceedings and cost is a panacea for delay, if any attributable to the petitioner. It is prayed that the petitioner may be permitted to examine the handwriting and fingerprints expert on the basis of comparison of signatures of the plaintiff on the receipt and Razia, daughter of the defendants may be, subject to terms and conditions imposed by this Court.

Counsel for the respondent/plaintiff, on the contrary, has supported the impugned order with the submission that as per stand of the petitioner in the written statement, receipt in question was stated to be

written by daughter of the plaintiff namely Razia and the plea raised in the application that the same was scribed by daughter of the petitioner/defendant is inconsistent with the allegations in the written statement. It has further been argued that the respondent raised a categorical plea, in reply to the application for additional evidence, that he does not know how to sign in English and the receipt does not bear his signatures. Further submitted that there is nothing on record suggestive of the fact that the respondent knows how to write in English much less to append his signatures in English and all the documents on record, admittedly signed by the respondent bears his signatures in Punjabi.

In response, counsel for the petitioner has submitted that on verification by the petitioner, it was found that the respondent is 10+2, sufficient to falsify and belie his stand in the reply that he always signed in Punjabi and did not know the English language.

I have heard counsel for the parties, perused the paper-book, various documents made available during the course of hearing and the order impugned.

Indisputably, the petitioner filed the application for additional evidence to examine Razia, daughter of the petitioner to prove receipt purported to be scribed by her and a handwriting and fingerprints expert to prove signatures of the plaintiff on the said receipt against an entry of Rs.2,500/-.

The respondent/plaintiff appeared in the witness-box and tendered into evidence his affidavit Ex.PW1/A and the documents marked Ex.P1 to P5 by way of examination-in-chief recorded on 03.08.2011. His cross examination was held on 30.11.2011. Perusal of the cross

examination would make it evident that the plaintiff was not confronted with the factum that receipt mark-A has been scribed by daughter of the plaintiff namely Razia as per plea raised in the written statement. The petitioner till date has not filed an application for amendment in the written statement in order to raise such a plea that receipt mark-A was scribed by his daughter and not daughter of the plaintiff. Under these circumstances, any such plea raised in the application that the receipt was scribed by daughter of the petitioner/defendant or she needs to be examined by way of additional evidence is misconceived and has rightly been rejected by the Court below.

No doubt, the petitioner closed his evidence within a period of about 4 months. Equally true is that delay itself may not constitute a ground to deny additional evidence that is relevant and material for just decision of the case. However, there is no explanation by the petitioner as to why the expert witness could not be examined at an appropriate stage of the proceedings despite exercise of due diligence. Plea of the petitioner that the receipt was scribed by daughter of the plaintiff is falsified and belied from his later stand that the same was scribed by his (defendants') daughter. The respondent/plaintiff filed replication controverting the allegations with regard to the petitioner's having raised a loan of Rs.30,000/-, signed blank documents or having repaid a substantial amount on different dates. Receipt mark-A has purported signatures of the plaintiff against entry of Rs.2,500/- dated 07.12.2009. The said entry bears the signatures in English. Counsel for the petitioner has not disputed that the respondent has signed all the documents available on record namely plaint, replication, affidavits, reply to the application for additional evidence etc.

in Punjabi. It is also not denied that the respondent has taken a categorical plea in reply to the application for additional evidence that he always signs in Punjabi and does not know the English language. There is nothing on record suggestive of the fact that after reply filed by the respondent, the petitioner either filed a rejoinder to controvert his plea in this regard or produce any document before the trial Court in order to show that the respondent has studied up to a particular class or he knows the English language much less he had ever put his signatures in English. The contention of counsel for the petitioner that inquiry made by the petitioner revealed that the respondent is 10+2 also does not get support from any material on record before this Court. As the petitioner has failed to convince this Court that the respondent knows English language and can sign in English or his sample signatures in English are available for the purpose of comparison when otherwise no such request was made in the application to call upon the respondent to give his specimen signatures in English, the petitioner cannot be permitted to made roving inquiries and adduce additional evidence to examine an handwriting and fingerprints expert. Though the learned trial Court has not adverted to these material aspects but in the given circumstances, plea of the petitioner for adducing additional evidence is untenable and liable to be rejected.

For the foregoing reasons, the petition fails and is accordingly dismissed without any order as to costs.

OCTOBER 22, 2016

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no